

**IN THE COURT OF APPEALS OF IOWA**

No. 6-941 / 06-1591  
Filed December 28, 2006

**IN THE INTEREST OF K.R.H., Minor Child,**

**K.K.H., Father,**  
Appellant.

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Appeal from the Iowa District Court for Warren County, Richard B. Clogg,  
Judge.

A father appeals from the adjudicatory and dispositional orders concerning  
one of his children. **AFFIRMED.**

Leanne M. Striegel, Des Moines, for appellant-father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney  
General, Gary Kendell, County Attorney, and Jane Orlanes, Assistant County  
Attorney, for appellee-State.

Cynthia Lange of Marberry Law Firm, Des Moines, for appellee-mother.

Christine Milligan-Ciha, Clive, guardian ad litem for minor child.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**SACKETT, C.J.**

Kelly, the father of eleven-year-old Kelsey, appeals from the juvenile court's adjudicatory order finding her to be a child in need of assistance and the dispositional order for the continued involvement of the Department of Human Services. He contends there is not clear and convincing evidence to support the statutory grounds for adjudication and the court abused its discretion in allowing certain testimony. We affirm.

**I. Background**

In late March of 2006, the Department of Human Services received information that Kelly uses marijuana in front of his children several times a day. The department received information in early April that Kelly admitted using methamphetamine, smoking marijuana in his children's presence, and buying methamphetamine. The department requested that Kelly submit to drug testing. He did not come for testing until two days after the request. The diluted sample tested positive for marijuana. The department issued a founded child abuse report naming Kelly as the perpetrator for failure to supervise Kelsey.

The State petitioned to have Kelsey found to be a child in need of assistance. Following a hearing on June 28 and July 27, the juvenile court found Kelsey to be in need of assistance. Specifically, the court found:

There is clear and convincing evidence of the father's regular use of marijuana; Susan . . . the father's paramour, who is a member of the household in which the child resides, has admitted using methamphetamine and tested positive for methamphetamine on June 22, 2006; father has history of substance abuse and has admitted to use of illegal drugs; history of diluted U.A. tests and delay in providing test samples by father and paramour; in a pending juvenile case Susan . . . is not permitted unsupervised visits with her children due to her drug abuse.

The court allowed Kelsey to remain with her father. After a dispositional hearing in September, the court continued Kelsey's placement with her father, but ordered that she not be left unsupervised with Susan.

## **II. Scope of review**

Appellate review of child-in-need-of-assistance proceedings is de novo. Iowa R. App. P. 6.4; *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). We give weight to the findings of the juvenile court, especially when considering the credibility of witnesses, but are not bound by those findings. *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990). The State has the burden of proving the allegations by clear and convincing evidence. Iowa Code § 232.96(2) (2005). "Clear and convincing evidence" is evidence leaving "no serious or substantial doubt about the correctness of the conclusion drawn from it." *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002) (quoting *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)).

## **III. Discussion**

Kelly raises three claims on appeal. He claims the State failed to prove the grounds for adjudication by clear and convincing evidence. He also claims the court abused its discretion in allowing the testimony of Susan's case worker and hearsay testimony from another case worker.

*A. Clear and convincing evidence.* Kelly contends there was not sufficient evidence Kelsey had suffered or was imminently likely to suffer harmful effects as a result of his failure to supervise her. See Iowa Code § 232.2(6)(c)(2). He argues the evidence shows that he exercises a reasonable degree of care in supervising Kelsey. He admits using marijuana, but argues he does not use it in front of the children. Kelly argues almost all the State's witnesses testified he is appropriate

with his children and they have no concerns about his ability to parent. He asserts it is mere speculation that he was not providing reasonable care for Kelsey.

The State has a duty to assure that every child within its borders receives appropriate care and treatment. *In re D.T.*, 435 N.W.2d 323, 329 (Iowa 1989). The provisions of Iowa Code chapter 232 are designed to effectuate that duty. See *In re M.M.*, 483 N.W.2d 812, 814 (Iowa Ct. App. 1992). They are preventative as well as remedial. *In re L.L.*, 459 N.W.2d 489, 494 (Iowa 1990). The goal of our statutory scheme is to prevent probable harm to the child; our statutes do not require delay until after the harm has happened. *Id.*

We find clear and convincing evidence supports a finding Kelsey is a child in need of assistance. Despite Kelly's denials, his children have seen him use drugs. There is evidence his substance abuse extends beyond marijuana to include methamphetamine. He lives with a woman whose drug use prevents her from having unsupervised contact with her children. He has attempted to defeat drug tests by delaying the test and diluting the sample. We agree with the findings of the juvenile court quoted above.

*B. Testimony of Marilyn Fowler.* Kelly contends the juvenile court erred in allowing the testimony of Susan's in-home service provider because she is not involved in the case before us and her testimony is not relevant. We first note that the court allowed the testimony subject to counsel's objection, which is the proper procedure in equity cases so that a full record is preserved for our de novo review on appeal. *Davis v. Roberts*, 563 N.W.2d 16, 20 (Iowa Ct. App. 1997). We conclude the juvenile court did not abuse its discretion in allowing the testimony because it is relevant to the case before us. Susan lives in the home with Kelly and

his children. Iowa Code section 232.2(6)(c)(2) includes “members of the household in which the child resides” in considering whether the child is in need of assistance. Because Susan’s methamphetamine use prevents her from unsupervised contact with her children, it is clear she could be a risk to Kelly’s children. Her presence in his household makes the proffered testimony relevant.

*C. Testimony of Kelly Brown.* The father contends the juvenile court erred in allowing Kelly Brown, a case worker, to testify. We find no objection to her testimony in the record. Consequently, this claim is not preserved for our review. See *In re C.D.*, 508 N.W.2d 97, 100 (Iowa Ct. App. 1993).

**AFFIRMED.**